

REMARKS

Applicant respectfully requests that this amendment be entered, because as pointed out in the accompanying request for withdrawal of the finality of the office action, the May 7, 2003 office action was prematurely made final.

Claims 18-31 remain pending in this application after entry of this amendment. Claims 18, 19, 22, and 23 were amended herein. Support for the amendments made to claims 18, 19, 22, and 23 can be found at least at page 13, lines 17-24. Further support for the amendments to claim 18 can be found at least at page 11, lines 20-25.

Drawing Objection

The Examiner objected to the drawings under 37 CFR 1.83(a) asserting that the drawings do not show every feature of the invention specified in the claims. Specifically, the Examiner asserts that the drawings have to show an implantable defibrillator and the connection of the leads to the jacket. Although Applicant does not necessarily agree with the Examiner, Figure 8 has been proposed that depicts a jacket, a defibrillator, pacer leads and pacer connections. Applicant respectfully asserts that this figure does not add new matter, because there is support for this figure at least at page 13, lines 19-22.

In light of proposed Figure 8, Applicant respectfully requests that the Examiner withdraw this objection.

35 U.S.C. § 112 Rejection

Claims 18-31 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention. Applicant respectfully disagrees with the Examiner.

According to the MPEP, the subject matter of the claim need not be described literally in order for the disclosure to satisfy the description requirement. MPEP § 2163.02. To satisfy the written description requirement, an applicant must convey with

reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention. MPEP § 2163.02.

Applicant respectfully asserts that the discussion on page 13 at lines 17-22 conveys to one of skill in the art the subject matter of claims 18-31. Specifically, the sentence "The open areas of the knit construction also allows for electrical connection between the heart and surrounding tissue for passage of electrical current to and from the heart" would convey to one of skill in the art that a device could include structures through which electrical current could be delivered to the heart. Similarly, the passage "for example, although the knit material is an electrical insulator, the open knit construction is sufficiently electrically permeable to permit the use of trans-chest defibrillation of the heart" would convey to one of skill in the art that the device could be coupled with a defibrillator. The phrase "the open, flexible construction permits passage of electrical elements (e.g., pacer leads) through the jacket" conveys to one of skill in the art that the structures through which electrical current are delivered to the heart can be passed through the jacket.

The Examiner states that there is no reference to a defibrillator that is implanted for pacing the heart. Applicant respectfully disagrees, because the discussion of trans-chest defibrillation conveys such a structure to one of skill in the art. Applicant also notes that there is no disclosure in the specification of connecting the pacer leads to the jacket, and also notes that the jacket is an electrical insulator. Applicant has amended claim 23 to clarify that the pacer leads are not necessarily connected to the material, but are configured to be in contact with the heart.

Based on the amendments to the claims and the discussion offered above, Applicant respectfully requests that this rejection be withdrawn because, contrary to the Examiner's assertion, the specification does convey to one of skill in the art that the Applicant had possession of the claimed subject matter at the time of filing.

35 U.S.C. § 103 Rejection

Claims 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Alferness '343 in view of Moore '900. The Examiner asserts that it would have been obvious for one of ordinary skill in the art to recognize that when the leads of Moore are

placed on the heart, they can be placed on top of or beneath the jacket of Alferness '343. Applicant respectfully disagrees with this characterization by the Examiner. The leads of Moore '900 are deployed within the pericardial sac 18, as seen in Figures 1 and 2 of Moore '900. Therefore, Applicant respectfully asserts that it would not be possible to deploy the electrodes of Moore '900 on the outside of the jacket of Alferness '343. Applicant also asserts that because the electrodes of Moore '900 are deployed only within the pericardial sac, one of skill in the art would not have been motivated to utilize them with the device of Alferness '343. Such a combination would require deployment of the electrodes within the pericardial sac, followed by application of the Alferness '343 device around the heart. Applicant respectfully asserts that one of skill in the art would not have been motivated to combine these two references because it would have been very difficult, if not impossible to apply the device of Alferness '343 with the electrodes of Moore '900 in place. Therefore, one of skill in the art would not have been motivated to combine the electrodes of Moore '900 with the device of Alferness '343. Based on the above comments, Applicant respectfully requests that this rejection be withdrawn.

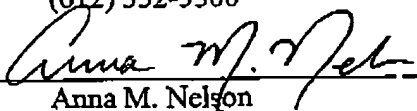
Conclusion

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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